

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CASE NO. 5:10-CV-00170-RLV-DSC**

BREWER & BREWER, PLLC, on its own)
Behalf and as Successor in Interest to)
BREWER & BREWER, Attorneys at Law)

Plaintiff,)

v.)

AMENDED ORDER

TIMOTHY L. FULLER, MARJORIE A.)
FULLER, COMMUNITY ONE BANK,)
N.A., BRANCH BANKING AND TRUST)
COMPANY, YADKIN VALLEY BANK)
AND TRUST COMPANY, SANDRA)
AND FRED LEMLY, JOHANNA)
EIKELAND, INVESTORS TITLE)
INSURANCE COMPANY, and BARRETT)
L. CRAWFORD, Trustee for the Estate of)
Michelle T. Shepherd,)

Defendants.)

THIS MATTER is before the Court on the motions of Defendants Branch Banking and Trust Company and Investors Title Insurance Company (“Movants”) for judgment on the pleadings and entry of consent judgment (Doc. 41), and default judgment supported by affidavit of counsel for Branch Banking and Trust Company (Docs. 38, 39). *See* Fed. R. Civ. P. 12(c), 55(b).

After commencement of this interpleader action on November 3, 2010, Plaintiff Brewer & Brewer, PLLC, deposited into a Registry Account with the Clerk of Court funds collected in regard to an Ashe County partition proceeding and theretofore held in trust. Thereafter, the Court discharged Plaintiff from further liability and issued a permanent injunction in favor of Plaintiff

by Order entered April 28, 2011. (Doc. 34.)

Having been duly served by Certified Mail Return Receipt Requested as evidenced by Plaintiff's Affidavits of Service (Docs. 14, 15, 16, 19, 20, 27) and Waivers of Service (Docs. 23, 24), Defendants Timothy L. Fuller, Marjorie A. Fuller, Community One Bank, N.A., Yadkin Valley Bank and Trust Company, Sandra Lemly, Fred Lemly, and Barrett L. Crawford, Trustee for the Estate of Michelle T. Shepherd, failed to plead, file an answer, or otherwise defend this action within the time allowed by law. Accordingly, the Clerk of Court entered default against said Defendants on August 25, 2011. (Doc. 37.)

Additionally, Defendant Johanna Eikeland served a letter on Plaintiff disclaiming any interest in the funds, based upon recovery for her loss from Investors Title Insurance Company. (Doc. 12 at 2.)

Accordingly, the pleadings have closed, and Movants are the only parties with any remaining rights in and claims to the funds. Movants have settled their competing claims to these funds, each agreeing to take a pro rata share according to their relative total claims: Branch Banking and Trust Company has agreed to accept \$21,290.02 of the funds available, and Investors Title Insurance Company has agreed to accept the remaining \$19,650.02. (Doc. 42 at 2); Fed. R. Civ. P. 54.

IT IS, THEREFORE, ORDERED that Movants' Motion for Default Judgment (Doc. 38) and Motion for Judgment on the Pleadings (Doc. 41) be **GRANTED**. Default judgment is hereby entered against Defendants Timothy L. Fuller, Marjorie A. Fuller, Community One Bank, N.A., Yadkin Valley Bank and Trust Company, Sandra Lemly, Fred Lemly, and Barrett L. Crawford, Trustee for the Estate of Michelle T. Shepherd, each of them, in this action, and judgment is hereby entered against Johanna Eikeland. **IT IS FURTHER ORDERED** that the

Clerk of Court disburse the funds in the Registry Account to Branch Banking and Trust Company in the amount of \$21,299.03, inclusive of interest earned while the funds were invested, and the remainder to Investors Title Insurance Company.

Signed: January 18, 2012

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees
United States District Judge

